



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: November 18, 1999

SUBJECT: PRE-MUR 368-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

Nov 18 3 03 PM '99

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RE: PRE-MUR 368

DATE FILED: 8/10/98

DATE ACTIVATED: 3/26/99

Expiration of Statute of Limitations: 7/31/00

Staff Member: Marianne Abely

SOURCE: Sua Sponte Submission

RESPONDENTS: Northeast Utilities Employees' Political Action Committee
and Jennifer L. Diggins, as treasurer ¹

RELEVANT STATUTES: 2 U.S.C. § 434(b)
11 C.F.R. § 102.5(a)(1)(ii)
11 C.F.R. § 114.5(e)(3)

INTERNAL REPORTS CHECKED: Disclosure Reports
CED Correspondence

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter arose from a sua sponte submission to the Federal Election Commission ("FEC" or "Commission") on the part of the Northeast Utilities Service Company ("Company").² The letter, dated August 6, 1998, was signed by James J.

¹ On June 7, 1999, an Amendment to the Committee's Statement of Organization was filed with the Commission. By this Amendment, the Committee gave notice that the name of the organization was being changed from the Northeast Utilities Political Action Committee to the Northeast Utilities Employees' Political Action Committee. In addition, the Amendment indicated that there was a new treasurer, Jennifer L. Diggins. During the time period relevant to the instant report, the Committee was known as the Northeast Utilities Political Action Committee and James J. Finnucan was serving as treasurer.

² Northeast Utilities Service Company ("Company"), the Committee's connected organization, is a registered electric utility holding company under the Public Utility Holding Company Act of 1935.

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Finnucan who was then serving as the treasurer for the Company's separate segregated fund, the Northeast Utilities Employees' Political Action Committee ("NUEPAC" or "Committee"). In this submission, Mr. Finnucan admitted that NUEPAC had failed to comply with certain FEC reporting regulations since first registering as a political committee with the Commission in 1978. (Attachment 1.) Specifically, since its registration NUEPAC has maintained one bank account out of which it has supported both state and federal electoral activities. Instead of reporting all of this activity in its FEC reports as the regulations require, however, the Committee had been disclosing only its federal activity to the Commission. Non-federal activities had been reported exclusively to the Office of the Secretary of State in Connecticut. These reporting irregularities were discovered during what was apparently a routine internal audit conducted by the Company in 1998.

The instant report focuses on NUEPAC's financial disclosure practices with the FEC between 1995 and the time period encompassed by the 1998 April Quarterly Report.³ Beginning with the 1998 July Quarterly Report, the Committee has filed consolidated disclosure reports detailing both its federal and non-federal activities. The review conducted by the Office of General Counsel ("Office") has confirmed that the respondents did in fact violate FEC reporting regulations during the time period in question. This report contains a recommendation that the Commission enter into pre-

³ While the apparent reporting violations have been ongoing continuously since NUEPAC first registered with the Commission, there are several reasons why this Office has chosen to limit the time frame of the inquiry. First of all, the five year statute of limitations for pursuing such violations in Court lessens the feasibility of examining reporting errors that occurred prior to 1995. In addition, the self-reporting nature of the matter and the fairly limited electoral involvement of the organization prior to the mid-1990s argue in favor of this approach. It should be noted that the Statute of Limitations was based on this narrowed time frame.

probable cause conciliation with the respondents.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act") prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a). A corporation may, however, legally participate in federal elections through the establishment of a political committee called a separate segregated fund ("SSF"). 2 U.S.C. § § 431(4)(B) and 441b(b)(2)(C). Within ten days of establishment, such committees must file a Statement of Organization with the Commission. 2 U.S.C. § 433, 11 C.F.R. § 102.1(c).

SSFs are permitted to accept contributions, as well as, make contributions to and expenditures on behalf of federal candidates and committees. The ability of these organizations to solicit contributions is limited by Commission regulations. A corporate SSF may only solicit contributions from a restricted class of persons associated with the connected organization, its parent, subsidiaries, branch divisions or affiliates. This potential class of contributors includes the corporation's stockholders, its executive and administrative personnel, as well as, these individuals' family members. 11 C.F.R. §§ 114.1(c) & 114.5(g).

The manner in which such contributions are received or collected by SSFs can vary and often includes periodic payment systems, such as payroll deductions, check-off systems or solicitation requests enclosing return envelopes. 11 C.F.R. § 114.1(f). The issuance of contribution guidelines is permissible, although those individuals being

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solicited in this way must be informed that the guidelines are merely suggestions.

Contributors must be notified that they are free to give more or less than the suggested amounts. 11 C.F.R. § 114.5(a)(2)(i) & (ii). Irrespective of how the money is received, such solicitations must also contain special notices that inform the potential contributor of the SSF's political purpose and of their right to refuse to contribute without fear of reprisal. 11 C.F.R. § 114.5(a)(3)-(5).

SSFs may receive up to \$5,000 per year from any one contributor. 11 C.F.R. § 110.4(c). Unless qualified as a multicandidate committee, an SSF may contribute up to \$1,000 per candidate, per election and \$5,000 per year to other political committees and \$20,000 per year to a national party committee. 11 C.F.R. §§ 110.1(b)(1), (c) & (d). Those committees that do qualify as so-called multicandidate committees may contribute up to \$5,000 per candidate, per election and \$15,000 per year to a national party committee. 11 C.F.R. § 110.2(b) & (c).

Political committees that engage in both federal and non-federal (state/local) activities have two options under the regulations with respect to how committee funds are maintained. They may set up one federal account (an SSF) that will support both federal and non-federal candidates and committees. All electoral activity in this case must be reported to the FEC. The other option is for the organization to set up two accounts: one, a political committee (an SSF) that supports federal activity only and complies with the registration and reporting requirements of the Act; and the other, a nonfederal account for moneys used exclusively in state and local elections. 11 C.F.R. § 102.5(a)(1)(i) & (ii).

There are certain conditions attached to the acceptance of contributions by political committees established for the purpose of financing federal and non-federal electoral

activities. According to 11 C.F.R. § 102.5(a)(2), only contributions meeting all of the following requirements may be received by the SSF and deposited into its single account:

1) the contributions are designated for the federal account; 2) the contributions result from a solicitation that expressly states that the moneys will be used in connection with a federal election; and 3) the contributions are from individuals who are informed that their contributions are subject to the prohibitions and limitations of the Act.

Those committees that choose to manage both federal and non-federal activities from a single account must comply with all the requirements of the Act. 11 C.F.R. § 102.5(a)(1)(ii). In particular these SSFs must, just like all other political committees, file periodic reports with the FEC disclosing all receipts and disbursements. 2 U.S.C. § 434(b), 11 C.F.R. § 114.5(e)(3). Because section 434(b) requires the disclosure of "receipts" and "disbursements", and not merely "contributions" and "expenditures", these organizations must report to the Commission all of their non-federal, as well as their federal, activity.⁴

B. Factual Analysis

As previously mentioned, the Northeast Utilities Service Company is the connected organization for NUEPAC. The Company, which is located in Hartford, CT, established this SSF by filing a Statement of Organization with the FEC on August 24, 1978. In addition to stating the Committee's intention to support candidates for Federal

⁴ Compare 2 U.S.C. §§ 434(b)(2) and (b)(4), which discuss the contents of reports as including all receipts and all disbursements, respectively, with 2 U.S.C. §§ 431(8)(A) and (9)(A), which define "contributions" and "expenditures" as being "for the purpose of influencing" federal elections.

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office in excess of \$1,000 per calendar year, the form also indicated that this SSF would be operating in more than one state and would therefore be filing election reports, called Statements of Receipts and Expenditures, with Connecticut's Office of the Secretary of State. According to its Statement of Organization, NUEPAC opened a bank account for its electoral activities with the Bank and Trust Company of Hartford CT.⁵ The SSF qualified with the FEC as a multicandidate committee on March 31, 1980. NUEPAC has represented to this Office that it has operated as an employee based political committee since its inception in 1978 and receives its contributions solely through payroll deductions.

Since 1978, NUEPAC has been separately disclosing its non-federal activities to the Secretary of State's Office in Connecticut and its federal activities to the Commission. It was not until the previously mentioned 1998 internal audit that the organization recognized that this practice was not in conformance with FEC disclosure regulations. Because NUEPAC maintained a single bank account for all its electoral activities, it should have been reporting all such federal and state involvement in its quarterly FEC disclosure filings. According to NUEPAC's submission, the error was unintentional and was caused by "an incorrect understanding of FEC reporting regulations." (Attachment I.)

A comparison of the state and federal reports confirms that there was a continuous failure to report all of NUEPAC's electoral efforts in support of non-federal candidates in violation of 2 U.S.C. § 434(b). The FEC reports submitted by NUEPAC during the

⁵ Since 1978 when the account was first established, this institution has been sold several times and the account is now with Fleet Bank in Hartford, CT.

relevant time period were incorrect as to the figures provided for: total receipts deposited into its single bank account; total disbursements made from the account; and actual cash balances maintained in the account. Table 1 shows the gross dollar amount of non-reported receipts and non-reported disbursements during the relevant time period. In total, the respondents failed to disclose \$118,480.88 in receipts and \$106,632.45 in disbursements to state candidate committees and party organizations from 1995 through the 1998 April Quarterly reporting period. Attachment 2. outlines the federal and state electoral activities of NUEPAC from 1995 through mid-1998 in detail and serves to highlight these reporting discrepancies.

TABLE 1

YEAR	RECEIPTS	DISBURSEMENTS
1995	\$32,029.67	\$6,050.00
1996	\$41,832.93	\$63,312.45
1997	\$36,453.64	\$17,405.00
1998	\$8,164.64	\$19,865.00
Total:	\$118,480.88	\$106,632.45

NUEPAC has represented that it has followed federal guidelines with respect to its receipt of contributions into its single account. The materials reviewed for this report seem to confirm this. The disclosure reports filed with both the FEC and the state of Connecticut reflect that the SSF received contributions exclusively from individual employees of the connected organization and its affiliates and that it did not accept money from corporations or labor organizations. These records also appear to

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demonstrate that the committee did not accept excessive contributions. The respondent committee has also indicated that contributions were received from employees belonging to the legally solicitable class under FECA through a payroll deduction program.

NUEPAC's federal disclosure reports do, in fact, appear to show that the contributors were made up exclusively of members of the restricted class, namely executives, administrators and several directors of Northeast Utilities and certain of its affiliated organizations. These reports also reveal a consistent pattern with respect to the same individuals making contributions on a regular basis, the timing of the contributions, and the amounts of money listed. This pattern seems to confirm the use of a payroll deduction program as NUEPAC's sole contribution generating vehicle.

While Connecticut election law requires political committees to report contributions aggregating in excess of \$30 along with the name and address of each individual, a contributor's occupation and employer are disclosed only in cases where the contributions range from \$100.00-\$1,000.⁶ Even though the SSF was not required to disclose the occupation and employer of each contributor in its state reports, these materials appear to indicate that the contributors listed probably fall within the federally mandated restricted class. It is possible to confirm that at least some of those persons belong to the solicitable class because many of the same individuals who are listed in the FEC reports also appear in the state filings as contributors. And, just as in the federal reports, there appears to be a pattern to the timing and amounts of contributions listed in the Connecticut filings that is consistent with a payroll deduction program.

⁶ See Connecticut General Statutes Annotated § 9-333j(c)(1) & (3) & 9-333j(c)(H).

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NUEPAC has indicated that those employees participating in this payroll deduction program have had the option of deciding whether and what portion of their moneys they wish to be utilized for federal and/or state activities. Once raised, contributions have been deposited in the SSF's single bank account and tracked through routine book keeping methods.

In conclusion, given that NUEPAC failed to report to the Commission a total of \$225,113.33 in non-federal funds from 1995 through the 1998 April Quarterly Reporting period, the Office of General Counsel recommends that the Commission find reason to believe that the Northeast Utilities Employees' Political Action Committee and Jennifer L. Diggins, as treasurer, violated 2 U.S.C. § 434(b).

III. CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS


1. Open a MUR.

2. Find reason to believe that the Northeast Utilities Employees' Political Action Committee and Jennifer L. Diggins, as treasurer, violated 2 U.S.C. § 434(b), and enter into conciliation prior to a finding of probable cause to believe.

3. Approve the attached Factual and Legal Analysis and Conciliation Agreement with the appropriate letter.

Lawrence M. Noble
General Counsel

11/19/99
Date

BY: 
Lois Lerner
Associate General Counsel

Attachments:

1. Sua Sponte submission.
2. Table of State and Federal Disclosure Reports
3. Conciliation Agreement
4. Factual and Legal Analysis

Staff member: Marianne Abely

ATTACHMENT 2**CHART OF NUPAC'S FEDERAL AND STATE FILINGS: 1995 - 1998****1995**

	FEDERAL - Mid-Year Report: 1/1/95 - 6/30/95	STATE - 1/1/95 - 4/6/95
Beginning Total:	\$12,677.09	\$2,429.75
Receipts:	Total: \$17,311.79 Itemized: \$1,316.85 Unitemized: \$15,994.94	\$8,575.97
Subtotal:	\$29,988.88	\$11,005.72
Disbursements/ Expenditures:	\$7,000.00 One amendment filed to redesignate \$1,500.00	\$600.00
Ending cash balance:	\$22,988.88	\$10,405.72

	FEDERAL -	STATE - 4/7/95 - 7/6/95
Beginning total:		\$10,405.72
Receipts:		\$7,307.09
Subtotal:		\$17,712.81
Disbursements/ Expenditures:		\$0.00
Ending cash balance:		\$17,712.81

	FEDERAL - Year End Report: 7/1/95 - 12/31/95	STATE - 7/7/95 - 10/5/95
Beginning Total:	\$22,988.88	\$17,712.81
Receipts:	Total: \$17,169.40 Itemized: \$7,330.14 Unitemized: \$9,839.26	\$8,522.41
Subtotal:	\$40,158.18	\$26,235.22
Disbursements/ Expenditures	\$7,600.00	\$2,050.00
Ending cash balance:	\$32,558.28	\$24,185.22

	STATE 10/6/95 - 12/31/95
Beginning balance:	\$24,185.22
Receipts:	\$7,624.20
Subtotal:	\$31,809.42
Disbursements/ Expenditures:	\$3,400.00
Ending cash balance:	\$28,409.42

1996

	FEDERAL - April Quarterly Report: 1/1/96 - 3/31/96	STATE - 1/1/96 - 4/4/96
Beginning balance:	\$32,558.28	\$28,409.42
Receipts:	Total: \$12,111.44 Itemized: \$669.95 Unitemized: \$11,441.49	\$11,182.04
Subtotal:	\$44,664.72	\$39,591.46
Disbursements/ Expenditures:	\$7,500.00	\$8,670.00
Ending cash balance:	\$37,169.72	\$30,921.46

	FEDERAL - July Quarterly Report: 4/1/96 - 6/30/96	STATE - 4/5/96 - 7/4/96
Beginning balance:	\$37,169.72	\$30,921.46
Receipts:	Total: \$11,203.82 Itemized: \$1,171.68 Unitemized: \$10,032.14	\$10,201.11
Subtotal:	\$11,203.82 Less refund: \$11,150.17	\$41,122.57
Disbursements/ Expenditures:	\$12,622.75 Less refund: \$12,676.40	\$11,853.65
Ending cash balance:	\$35,697.14	\$29,268.92

	FEDERAL - October Quarterly Report: 7/1/96 - 9/30/96	STATE - 7/4/96 - 10/3/96
Beginning total:	\$35,697.14	\$29,268.92
Receipts:	Total: \$12,369.36 Itemized: \$3,000.48 Unitemized: \$9,368.88	\$11,069.50
Subtotal:	\$48,066.50	\$40,338.42
Disbursements/ Expenditures:	\$21,000.00 Bank fees: \$38.80 Total: 21,038.80 6/17/96 redesignation/refund of \$1,500.00	\$32,588.80
Ending cash balance:	\$27,027.70	\$7,749.62

	FEDERAL - 12 Day Pre-General Report 10/1/96 - 10/16/96	STATE - 10/4/96 - 10/22/96
Beginning total:	\$27,027.70	\$7,749.62
Receipts:	\$0.00	\$0.00
Subtotal:	\$27,027.70	\$7,749.62
Disbursements/ Expenditures:	\$2,000.00	\$2,700.00
Ending cash balance:	\$25,027.70	\$5,049.62

	FEDERAL - 30 Day Post Election Report: 10/17/96 - 11/25/96	STATE - 10/23/96 - 12/31/96
Beginning total:	\$25,027.70	\$5,049.62
Receipts:	Total: \$6,797.92 Itemized: \$2,213.71 Unitemized: \$94,584.21	\$9,380.28
Subtotal:	\$31,825.62	\$14,429.90
Disbursements/ Expenditures:	\$4,500.00	\$7,500.00
Ending cash balance:	\$27,325.62	\$6,929.90

	FEDERAL - Year End Report: 11/26/96 - 12/31/96	STATE
Beginning total:	\$27,325.62	
Receipts:	Total: \$3,335.01 Itemized: \$1,207.78 Unitemized: \$2,127.23	
Subtotal:	\$30,660.63	
Disbursements/ Expenditures:	\$1,000.00	
Ending cash balance:	\$29,660.63	

1997

	FEDERAL - Mid-Year Report: 1/1/97 - 6/30/97	STATE - 1/1/97 - 4/3/97
Beginning total:	\$29,660.63	\$6,929.90
Receipts:	Total: \$19,893.62 Itemized: \$1,495.00 Unitemized: \$18,398.62	\$9,850.41
Subtotal:	\$49,554.25	\$16,780.31
Disbursements/ Expenditures:	\$15,500.00	\$1,000.00
Ending cash balance:	\$34,054.25	\$15,780.31

	FEDERAL -	STATE - 4/4/97 - 7/3/97
Beginning total:		\$15,780.31
Receipts:		\$8,115.55
Subtotal:		\$23,895.86
Disbursements/ Expenditures:		\$0.00
Ending cash balance:		\$23,895.86

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	FEDERAL - Year End Report: 7/1/97 - 12/31/97	STATE - 7/4/97 - 10/2/97
Beginning total:	\$34,054.25	\$23,895.86
Receipts:	Total: \$20,119.20 Itemized: \$7,839.21 Unitemized: \$12,279.99	\$9,192.48
Subtotal:	\$54,173.45	\$33,088.34
Disbursements/ Expenditures:	\$14,450.00	\$5,600.00
Ending cash balance:	\$39,723.45	\$25,988.34

	FEDERAL	STATE - 10/3/97 - 10/21/97
Beginning total:		\$27,488.34
Receipts:		\$0.00
Subtotal:		\$27,488.34
Disbursements/ Expenditures:		\$1,500.00
Ending cash balance:		\$25,988.34

	FEDERAL	STATE - 10/22/97 - 12/31/97
Beginning total:		\$25,988.34
Receipts:		\$9,295.20
Subtotal:		\$35,283.54
Disbursements/ Expenditures:		\$9,305.00
Ending cash balance:		\$25,978.54

1998

	FEDERAL - April Quarterly Report: 1/1/98 - 3/31/98	STATE - 1/1/98 - 4/2/98
Beginning total:	\$39,723.45	\$25,978.54
Receipts:	Total: \$8,448.67 All unitemized	\$8,164.64
Subtotal:	\$48,172.82	\$34,143.18
Disbursements/ Expenditures:	\$8,856.55	\$19,865.00
Ending cash balance:	\$39,315.57	\$14,478.18

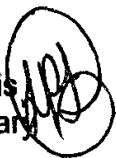
	FEDERAL - July Quarterly Report: 4/1/98 - 6/30/98 *First filing that includes State activity.	STATE - 4/3/98 - 7/2/98
Beginning total:	\$53,593.75 Federal: \$39,315.57 State: \$14,278.18	\$14,278.18
Receipts:	\$16,568.80 Itemized: \$5,497.93 Unitemized: \$11,070.87	\$8,192.75
Subtotal:	\$70,162.55	\$22,470.93
Disbursements/ Expenditures:	Total: \$26,225.00 Federal: \$11,500.00 Non-federal: \$14,275.00	\$14,725.00
Ending cash balance:	\$43,937.55	\$7,745.93



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: Mary W. Dove/Lisa R. Davis 
Acting Commission Secretary

DATE: November 24, 1999

SUBJECT: Pre-MUR 368 - First General Counsel's Report
dated November 19, 1999.

The above-captioned document was circulated to the Commission
on Friday, November 19, 1999.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	<u>XXX FOR THE RECORD</u>
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	<u>XXX</u>
Commissioner Sandstrom	<u>XXX</u>
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	—

This matter will be placed on the meeting agenda for

Tuesday, November 30, 1999.

Please notify us who will represent your Division before the Commission on this matter.

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